IN SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

No. 489.

THE CONSOLIDATED COAL CO. OF ST. LOUIS,
Plaintiff in Error.
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

STATEMENT.

In 1891 the General Assembly of Illinois enacted a statute with reference to the inspection of coal mines. It was amendatory of prior acts which have no bearing upon the question presented by this record. It divided section 11 of a prior act of 1879 into paragraphs and designated each paragraph by some letter, retaining the number of the amended section. Session Laws 1895, p. 252.

Section 11(a) of the amendatory act divided the State into seven inspection districts.

Section 11(b) makes it the duty of the Governor to appoint one inspector of coal mines for each of the seven districts of the State.

Section 11(c) prescribes the qualifications of inspectors and provides the oath to be taken and the bond to be given by them respectively.

Section 11(d) provides that any person, company or corporation, operating any coal mine in Illinois, shall be required to pay an inspection fee of not less than six nor more than ten dollars for each visit of inspection or investigation at a coal mine by an Inspector, such fee to be regulated by the class of the mine which shall be fixed by the Inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection of such mine, said fees to be paid quarterly to the Secretary of the Bureau of Labor Statistics and by him covered into the State Treasury to be held as a fund for the payment of Inspectors' salaries. It further provides that it shall be the duty of each Inspector, as often as he may deem it necessary and proper, and at least four times a year, to inspect each mine in his district. The salary of each Inspector is fixed at $1,800 a year and if the fund arising from inspection fees is insufficient to meet the charge, the deficiency is to be paid out of the Treasury. This section also contains other provisions not pertinent to the questions presented.

Section 11(e) provides that it shall be unlawful for any person, company or corporation to operate any coal mine in Illinois without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section 11, and in case of refusal to pay the inspection fees, it is made the duty of the State's Attorney to proceed by injunction without bond to restrain the delinquent from operating or attempting to operate his mine or from carrying on a mining business.

In 1897 this section 11(e) was so amended as to apply

only to mines where more than five men are employed at any one time.

The above subdivisions are printed in full as an appendix hereto.

The sanitary regulations mentioned above, are those provided for by the general mining law of Illinois which is to be found in Chapter 93, Rev. Statutes of Illinois, of which the act above abstracted is now a part.

The plaintiff in error was the owner of certain coal mines in the Fourth, Fifth and Sixth Inspection Districts, in each of which more than five men were employed. Thirty-one of those mines were inspected between November 2, 1895, and June 26, 1899, by the several Mine Inspectors, as follows:

111 inspections at $6 each;

69 inspections at $8 each;

60 inspections at $10 each;

making an aggregate of $1,818 for inspection fees.

There were 853 coal mines in Illinois subject to inspection. The Inspectors are seven in number and the salary of each is $1,800 a year. The number of inspections required by law is four every year as a minimum, but the Inspectors may inspect or *investigate* the mines whenever they think it necessary or proper so to do. The total expense of inspecting all the mines is $12,600.

The plaintiff in error having refused to pay the inspection fees charged against it, an action was brought against it in the name of The People. The declaration is upon the statute, to which it makes reference, and the cause of action

is based solely upon the act above set out. A stipulation of facts was filed and judgment was given in the Circuit Court of St. Clair County against the plaintiff in error, which was defendant then. A motion in arrest of judgment was made, one of the grounds thereof being that the statute declared on contravened the Fourteenth Amendment to the Constitution of the United States. The motion was denied and judgment was entered against the defendant there for $1,818. A writ of error was prosecuted to the Supreme Court of Illinois, where the judgment of the Circuit Court was affirmed. This writ of error is sued out to review the action of the Supreme Court of Illinois. The errors assigned and relied upon are:

I. That the Supreme Court of Illinois erred in not reversing the judgment of the St. Clair Circuit Court, and

II. That said Supreme Court erred in holding to be valid and not repugnant to the Fourteenth Amendment to the Constitution of the United States the act of the General Assembly of Illinois sued on.

The main question raised for adjudication, is whether the said act, in so far as it gives to District Mine Inspectors an untrammelled discretion as to how often they will inspect and an unregulated discretion as to what fees they shall charge within the limits fixed by those acts, is in contravention of that provision of the Fourteenth Amendment to the Constitution of the United States forbidding any State to deprive any person of life, liberty or property without due process of law or to deny to any person within its jurisdiction the equal protection of the law.

A second question so raised is whether the act, as

amended in 1897, in so far as it discriminates as to penalties imposed upon persons engaged in the same business, and inflicts them upon some and not upon others, is a legitimate exercise of the police power.

A third question so raised is whether the act is an "inspection" law within the true meaning of that word, and in that sense which is required to make it a proper police regulation.

BRIEF.

The Fourteenth Amendment to the Constitution of the United States prohibits statutes which are capable of being executed arbitrarily and with discrimination, unequally and unjustly and without regard to a legal discretion.

Yick Wo v. Hopkins, 118 U. S. 256.

City of Baltimore v. Radecke, 49 Maryland 217.

Walsh v. City of Denver, 53 Pac. Rep. 458.

Amer. & Eng. Enc. Law, 2nd Ed. Vol. 6 p. 967.

And the constitutional validity of a law is to be tested, not by what has been done under it, but by what may, by its authority, be done.

Stuart v. Palmer, 74 N. Y. 183.

And while it is competent and proper for any State to exercise its police power for the protection of the health and morals of its people, every regulation made in the exercise of that power must be uniform as to the class upon

which it operates and leave no arbitrary discretion in executive officers as to what persons are to be included in the class, and no discretion to be exercised in the way of discrimination, against or in favor of any who are, by the regulation itself, placed in any particular class.

St. Louis & San Francisco R'y v. Mathews, 165 U. S. 1, at p. 27.

Jones v. Brim, 165 U. S. 180, at p. 184.

Minneapolis R'y Co. v. Beckwith, 129 U. S. 26.

Powell v. Pennsylvania, 127 U. S. 678, at p. 687.

Yick Wo v. Hopkins, 118 U. S. 256.

Barbier v. Connolly, 113 U. S. 27.

Amer. & Eng. Enc. Law, 2nd Ed. Vol. 6 p. 967 note 8.

Noel v. The People, Ill. 58 N. E. Rep. 616.

A statute which imposes penalties or punishments for its infraction upon one citizen, and allows another equally guilty to escape those penalties or punishments, is void, and no authorities are necessary to support this proposition.

Genuine inspection laws are upheld because it is their purpose and effect to protect the public health or insure the public safety, but a law, the evident purpose of which is to ascertain whether a statute has been disregarded, or to fix

the guilt or innocence of any citizen, or to obtain evidence against him, is not a proper inspection law, no matter what it calls itself.

People v. Comp. Gen. Transatlantique, 107 U. S. 59.

ARGUMENT.

MAY IT PLEASE THE COURT:

In view of the many decisions which have been made by this Court with respect to the effect of the Fourteenth Amendment upon the exercise of the police power inherent in the States, there is no longer any doubt as to what the true rule is.

For present purposes, it may be conceded that it was competent for the State of Illinois to provide for the inspection of coal mines by some uniform regulation, bearing equally upon all persons of the same class engaged in the business of mining coal in that State. The first contention is that the acts upon which this litigation is founded, do not bear equally upon all citizens of the same class who engage in that business, but that they vest a discretion in executive officers, capable of being used arbitrarily and with unjust discrimination. The general class which the statutes affect, is composed of all who operate coal mines. It might have been competent for the State, by its Legislative Department, to make several classes of mines subject to inspection, basing the dividing

line between the classes upon the size of the various mines, or the number of men employed therein, or upon some other just and apparent physical difference, but if this had been done, the rule would still apply, that all those in any class so constituted must bear equal burdens and not be subject or liable to discrimination in the execution of the law. If more burdens were to be imposed upon members of one class than were to be imposed upon members of another class, it was necessary, in order to avoid the prohibition of the Fourteenth Amendment, that the designation of the classes be made by the law itself and not left to the discretion of any executive officer, acting without the guidance of a definite rule laid down in the statute. Classes may be formed and defined by a law made in the exercise of the police power, but such a law is not valid where it leaves the classes to be formed and defined by an executive officer, and places diverse burdens upon classes so formed.

The statute under consideration here requires the Inspector to inspect each mine in his district as often as he deems it necessary and proper, and at least four times a year, and requires the mine owner to pay an inspection fee for each inspection, of not less than six dollars nor more than ten dollars, the fee to be regulated by the class of the mine, which shall be fixed by the Inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection. It further provides that any mine owner who employs more than five men and who fails to pay any inspection fees shall be enjoined, not only from operating the inspected mine, but from carrying on the mining business in the State of

Illinois. Under that statute, the discretion as to how often inspections shall be made is vested, without any sort of limit, absolutely in the Inspector. There is nothing to prevent him from inspecting a particular mine every day and making such a charge as he sees fit, within the limits set by the statute. No rule is given by the law which can guide him and protect the mine operator from unjust discrimination. He is charged with the duty of dividing the mines into classes, and the only guide given him by the law is a general provision that the fees shall depend upon the length of time consumed in the inspection and the expense necessarily incurred, so that the same mine might, on three several occasions, be in three different classes and subject to three different charges, in the discretion of the Inspector. There is no provision that all mines which require a given time in which to be inspected, shall be subject to one charge and all which require another time shall be subject to another charge. Nor is there any definite rule or regulation given by the statute under which the Inspector and the mine owner would both know in what class the mine should be considered.

The complaint therefore is two-fold. The law makes the number of inspections entirely discretionary with the Inspector and it devolves upon him the duty of classification which the Legislature ought to have performed itself.

It is apparent that there could be no well founded complaint as to the number of inspections, if each inspection were not followed by a charge upon the mine owner, but being so followed, it is equally apparent that the Inspector, being governed by nothing but his own inclination in that

regard, could inspect a mine owner out of his business. *There is no limit set to the number of fees* he may collect under the law. He may inspect one mine four times a year and another two hundred and fifty times. The size of the mine, the number of men employed, the condition of the *stratum* of coal or of the roof of the mine, the tendency to the development of noxious gases—in short, the necessity for inspection has no relation to the acts of the Inspector. It rests with him, without any reference to any physical conditions, to say how often he will inspect, and the mine owner must pay whatever fee he sees fit to charge from six to ten dollars for each inspection, or quit his business.

It is not material whether, in any given case, the discretion given by a statute to an executive officer is abused: the prohibition of the Fourteenth Amendment is directed against the use of discretion and not against its abuse. A law which makes it possible to discriminate unjustly is void, because the citizen is guaranteed a government of law, as distinguished from a government of men. He has a right to know, from the law itself, what duties he must perform, what privileges he may exercise and what burdens he must bear. The mere fact that he may be discriminated against by an executive officer, necessarily deprives him of the equal protection of the law to which he is entitled.

The Fourteenth Amendment refers, not to what has been done under any given statute, but to what might be done. Nothing need be considered but the statute itself, although this Court has examined the acts of the executive officers to ascertain the real nature of the regulation complained of. Such examination is not necessary in this case. The

defect is apparent upon the face of the enactment. In the case of *Yick Wo v. Hopkins*, 118 U. S. 356, this Court cites with approval the case of *City of Baltimore v. Radecke*, 49 Maryland 217. In that case Radecke, having a permit so to do from the Mayor and Council of Baltimore, erected a steam engine in the city. The permit contained a condition that Radecke should remove the engine after six months notice to that effect from the Mayor. There was notice and refusal to conform to it, and a suit was brought to recover the penalty prescribed by the ordinance. A Bill in Equity was filed by Radecke to restrain the prosecution of the suit. Speaking of the ordinance in relation to the use of steam engines, the Court of Appeals of Maryland said:

> "It does not profess to prescribe *regulations* for their construction, location or use, nor require such precautions and safeguards to be provided by those who own and use them as are best calculated to render them less dangerous to life and property, nor does it restrain their use in box factories and other similar establishments within certain defined limits, nor in any other way attempt to promote their safety and security without destroying their usefulness. But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the prosecution of any business in the city of Baltimore, to cease to do so, and, by providing compulsory fines for every day's disobedience of such notice of order and removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays down no *rules* by which its *impartial execution* can be secured or partiality and oppression prevented."

The Supreme Court of Illinois meets the difficulty with the argument *ab inconvenienti*. It seems difficult to lay down any definite rule in a statute, and therefore discretion and the power to discriminate must be vested in the executive officer. This is a fair statement of the position taken by that learned Court, as will be seen from a consideration of the able opinion delivered by Mr. Justice Phillips, printed in the Record. (Record page 13.) It is submitted that this position, even if correct as a matter of fact, is unsound. Nor does the suggestion, made in the opinion, that if there should be any unjust discrimination, it could be corrected in the Courts, suffice to meet the prohibition of the Fourteenth Amendment. That amendment forbids any State to deny any person in its jurisdiction the equal protection of the law. Before this statute was enacted that protection existed—after it was enacted that protection was withdrawn and therefore denied. It is the equal protection which the law of the land gives to every citizen, that is guaranteed by the amendment. Whenever a State substitutes for the equal protection of that law, an executive discretion as to how and when any given statute may be executed, the citizen is no longer protected by the law. Being no longer so protected, the equal protection of the law is denied him. The law of the land is his shield, and he is not to be deprived of it under any pretense whatever. He cannot be left unprotected by law, no matter how much or how little he may be protected by executive officers. It is a government of equal law which is guaranteed to the citizen by the Fourteenth Amendment, and not a government of men, no matter how good those men may be. The equal protection of the law is an existing, affirmative condition,

and therefore the amendment does not provide that every State shall see to it that every person in its jurisdiction has the equal protection of the law, but that no State shall deny such protection, or, in other words, negative or deny an existing right.

But it may be suggested that the learned Supreme Court of Illinois is mistaken as to the possibility of prescribing any definite and fixed rules for the inspection of coal mines. A classification is not only feasible, but easy to make, as appears from a glance at the statutes under consideration. The amendatory act of 1897, which excludes from the operation of the penalties of the statute all mines in which not more than five men are employed, shows that it is not as difficult to classify coal mines as the learned Supreme Court of Illinois supposes it to be. If the Legislature of Illinois could so easily distinguish between the mines subjected to penalties and those not so subjected, by putting into one class all those in which not over five men were employed, and thus officially recognize this method of classification as a proper one for that purpose, it is difficult to see what obstacle there was to a like system of classification as to all the mines for inspection purposes.

It would not strengthen the acts under consideration if it were to be determined that, in directing the Inspectors as to what the inspection fee should be and requiring it to be graded in accordance with the time consumed and the expense incurred in making the inspection, the law laid down a sufficiently distinct rule or regulation, because if this were so, the rule would only apply to the fee to be charged for each inspection and have no application to the

number of fees which might be charged, that matter being left entirely to the discretion of the Inspector. It is not the amount of any single inspection fee that is complained of, it is the fact that under this law an Inspector could, if he saw fit, inspect a given mine frequently, uselessly and unnecessarily and oppress its owner by the imposition of an unequal burden upon him. He could discriminate against any one who displeased him, or in favor of any one to whom he was friendly. As was said by the Court of Appeals of Maryland in the Radecke case, *supra:* his action or non-action might proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, and it is unnecessary to suggest or comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration.

One mine in Illinois owned by a friend of the Inspector might be inspected four times a year, while one in like condition owned by an enemy might be inspected a hundred times. The friend would pay twenty-four dollars into the State Treasury and the enemy anywhere from six hundred to a thousand dollars, or even more than that if the Inspector saw fit to make more inspections.

The Supreme Court of Illinois in a very late case has itself furnished a notable authority against the conclusion it reached in this case. In the case of *Noel v. The People*, unreported—decided Oct. 19, 1900, and published in N. E. Reporter, Vol. 58, p. 616, the Legislature had passed an

act regulating the practice of pharmacy in Illinois. It provided for the registration of pharmacists by the Board of Pharmacy and made it a penal offense for any person not a registered pharmacist to open or conduct any pharmacy, dispensary, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing drugs, medicines or poisons, but providing that nothing in the act contained should be construed to prevent the sale of patent and proprietary medicines and domestic remedies by retail dealers as thereinafter provided. The provision referred to was to the effect that the Board of Pharmacy might, in its discretion, issue permits to sell the usual domestic remedies and proprietary medicines under such restrictions as the Board might deem proper. In commenting upon this act the learned Judge who delivered the opinion of the Court used the following language:

> "The official discretion conferred upon the Board is unregulated and not subjected to any permanent provisions operating generally and impartially. No conditions are prescribed upon which a permit authorizing the sale of the usual domestic remedies and proprietary medicines is to be issued. A law which thus invests any board or body of officials with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, is invalid. It makes unjust discriminations between persons coming within the same class. * * * The Board is thus authorized to confer a privilege upon one person, firm or corporation, and to deny the same privilege to another person, firm or corporation, and is not required to be governed in doing so, by any fixed rules or regulations, but may be moved thereto by its own caprice or favoritism. Laws thus conferring discretionary and arbitrary power are not only invalid for the reasons already

stated, but amount, in effect, to a delegation by the Legislature, of its legislative functions to the board of officials in question. The Legislature undoubtedly has the power, in the interest of the public health, to pass a law regulating the disposition of these domestic remedies and proprietary medicines: but instead of doing so, in section 8 it has abdicated its own power upon the subject, and conferred such power upon the Board of Pharmacy, to be exercised according to the discretion of the Board."

Before the passage of the amendatory act of 1897, all operators of coal mines in Illinois, without reference to the size of these several mines, were compelled to submit to the inspection of their property and to pay the inspection fees charged by the inspectors under certain severe penalties, which were prescribed by the statute. Any mine owner who neglected or refused to pay the inspection fees might be summarily compelled to close his mine and go out of the mining business. The act of 1897 amended the prior act by limiting all the penalties of the law to mine owners who employed more than five men. Mines in which five men or less were employed, were still left subject to inspection, and subject to the payment of inspection fees, and subject to all the general provisions of the law with respect to sanitary regulations, but they were relieved from the penalties theretofore imposed upon all who violated the law. It is contended that this amendatory act of 1897, of itself, made the whole inspection law invalid.

It may be urged that this action is not one to enforce any penalty provided by the act, and that as long as there is no attempt to enforce the penal provision, the question whether the act is valid or invalid on the ground that, as amended, it releases one from a penalty to which it holds another, cannot properly be raised. The amendatory act, by its express terms, makes it "unlawful" for one citizen to operate a coal mine when he has failed to pay inspection fees, while another citizen, who has also failed to make payment of the same fees, may lawfully proceed with the prosecution of his mining busidess. It would seem that a statute of this description is void not only as to the penal portion of it, but totally void, because the penalty enters into and pervades the body of the statute and affects all of its provisions. A payment demanded of one citizen under severe penalties from which another citizen in like circumstances is relieved, is unlawfully demanded.

The act in question is not an inspection law in the sense that its purpose is the preservation of the public health or public safety; and this for two reasons. In the first place it relates to a single class of people who constitute but a small fraction of the public; and in the second place its purpose is merely to investigate and punish, and in this government, a citizen, engaged in a lawful business cannot be charged with the cost of the investigation of that busi-

ness by public officers, made for the purpose of laying a foundation for a prosecution.

Under the act in question here, the inspectors have no duties except to investigate and ascertain whether or not the operators of coal mines are obeying the general statute enacted with reference to the safety of their employees. Section 11(c) speaks of visits of inspection *or investigation* and imposes a charge for each visit.

The inspection of appliances as a means of detecting breaches of the law, is no part of a just police regulation. All the inspection laws that have been sustained by the Courts are such as tended to protect the public by preventing a breach of the law. The act under consideration shows upon its face that the inspectors are simply provided for the purpose of seeing whether the law has been violated and then taking steps to have penalties inflicted. They have no duty to prevent harm to the public. A quarantine inspector, a wheat inspector, a seed inspector referred to in decided cases, all acted before injury could be inflicted, and their sole province was to prevent the injury to the public health, morals or safety that was threatened. They were a proper part of a preventive plan. But these coal mine inspectors, by the terms of the act itself, are charged with no duty but that of ascertaining whether the law has been violated and taking steps to punish the violation. It is true they are to see that every necessary precaution is taken to insure health and safety, but when the general law governing the operation of coal mines in Illinois, is consulted, it will be discovered that it provides for all the

things that constitute "necessary precautions" and the provision of the act in question is only equivalent to saying that the inspectors shall see to the enforcement of the law. They have no power to remedy any evil they may find. They have no power to prevent, they have only power to see to the punishment. All inspectors appointed under a proper police regulation and as a part thereof, have power to prevent the public injury. That is their duty and the purpose of their existence. It is this prevention only that makes an interference with natural rights at all admissible. It is the preservation of the public safety and health and consequently the prevention of public danger and sickness that alone support the exercise of the police power. If the inspector in a quarantine case had no power except to inspect a vessel, and then proceed against the master if he landed the passengers or the cargo, he would not be preserving the public health and would be no proper part of a police regulation.

It might be argued that the Legislative Department could lawfully provide these inspectors for the very purpose of ascertaining whether the law had been violated, but if that were conceded, it would not meet the difficulty. The complaint is not so much against the existence of the inspectors as it is against their charges. If they are public officers, whose duty it is to ascertain who is violating the law, they must be paid by the public. The Legislature cannot assume that certain persons will violate the law and proceed to charge them with the cost of ascertaining

whether the legislative assumption in that regard was well founded or not.

But there is another ground for the contention that the act complained of is not a proper inspection law. It creates a fund out of which the salaries of the Inspectors are paid. These salaries are the only claims against that fund. Perhaps there could have been no just objection to a law which required contributions from mine owners to a fund to pay Inspectors, if such contributions were guaged by the size of the several mines, or the number of men employed therein, or their gross output. In such case the number of inspections would have been immaterial. The contributions required would have been measured by some physical condition, and all who were called upon to make them would have known their extent beforehand. As the law now is, the fund to be raised is seven times $1,800, or $12,600. There are 853 mines to be inspected. The minimum charge is $6, and if each mine is inspected four times a year, which is the least number required by the statute, at the minimum charge of $6 for each inspection, the fund created would amount to $21,772. But there is no limit to the number of inspections, and they could be made as often as it is physically possible to make them. If the Inspectors in each district deem it proper to inspect every mine therein once a week they could do so under this law, and raise a fund of $266,136 by charging only the minimum fee. All this, except the $12,600 necessary to pay the Inspectors, would,

under the law, have been paid into the State Treasury to the relief of the general tax-payers of the State.

It is contended that a statute, in pursuance of which a large sum, or any sum of money, is collected from one class of citizens for the benefit of the public at large, without resort to any rule of uniformity, deprives those citizens of their property without due process of law. Here the mine owners, or such of them as the Inspectors may select for that purpose, are required to raise a fund which the statute itself limits to $12,600 a year, but when the methods provided by the statute for creating this fund are examined, it is found that their use results in raising more money than the fund needs, and that it is possible under the law to raise a vast sum of money by inspecting coal mines, and turn it into the State Treasury for the benefit of the general tax-payers of the State. This is not due process of law.

It is respectfully submitted that the judgment of the Supreme Court of Illinois ought to be reversed with directions to reverse the judgment of the St. Clair Circuit Court.

CHARLES WAIT THOMAS,
Attorney for Plaintiff in Error.

APPENDIX.—LAWS OF ILLINOIS.

Act of 1895 and Amendment of 1897.—Law 1895, P. 252. Laws 1897, P. 269.

Section 11(a)—This State shall be divided into seven inspection districts, as follows: The first district shall be composed of the counties of Boone, McHenry, Lake, DeKalb, Kane, Dupage, Cook, Lasalle, Kendall, Grundy, Will, Livingstone and Kankakee. The second district, the counties of Jo Daviess, Stephenson, Winnebago, Carroll, Ogle, Whiteside, Lee, Rock Island, Henry, Bureau, Mercer, Stark, Putnam, Marshall, Peoria and Woodford. The third district, the counties of Henderson, Warren, Knox, Hancock, McDonough, Schuler, Fulton, Adams and Brown. The fourth district, the counties of Tazewell, McLean, Ford, Iroquois, Vermilion, Champaign, Piatt, DeWitt, Macon, Logan, Menard, Mason and Cass. The fifth district, the counties of Pike, Scott, Morgan, Sangamon, Christian, Shelby, Moultrie, Douglas, Coles, Cumberland, Clark, Edgar, Montgomery, Macoupin, Greene, Jersey and Calhoun. The sixth district, the counties of Monroe, St. Clair, Madison, Bond, Clinton, Fayette, Marion, Effingham, Clay, Jasper, Richland, Crawford and Lawrence. The seventh district, the counties of Washington, Wayne, Edwards, Wabash, White, Hamilton, Franklin, Perry, Randolph, Jackson, Williamson, Saline, Gallatin, Hardin, Pope, Johnson, Massac, Union, Alexander and Pulaski.

Section 11(b)—The Governor shall upon a recommendation of a board of examiners elected for that purpose, composed of two practical coal miners, two coal operators, and one mining engineer, to be appointed by the Bureau of Labor Statistics of this State, all of whom shall be sworn to a faithful discharge of

their duties, appoint seven properly qualified persons to fill the offices of inspectors of coal mines in this State (being one inspector for each district provided for in this act), whose commissions shall be for the term of two years, but they shall at all times be subject to removal from office for neglect of duty or malfeasance in the discharge of duty, as hereinafter provided for.

SECTION 11(c)—The inspectors so appointed shall have attained the age of thirty years, be citizens of this State and have a knowledge of mining engineering sufficient to conduct the development of coal mines and a practical knowledge of the methods of conducting mining for coal in the presence of explosive gases, and of the proper ventilation of coal mines. They shall have had a practical mining experience of ten years, and shall not be interested as owner, operator, stockholder, superintendent or mining engineer of any coal mine during their term of office, and shall be of good moral character and temperate habits, and shall not be guilty of any act tending to the injury of miners or operators of mines during their term of office. They shall provide themselves with the most approved modern instruments for carrying out the intention of this act. The inspectors, before assuming the duties of their several offices, shall take an oath of office, as provided for by the Constitution, and shall be required to enter into a bond to the State in the sum of five thousand dollars ($5,000) with sureties to be approved by the Governor, conditioned upon the faithful performance of their duties in every particular, as required by this act, said bond, with the approval of the Governor endorsed thereon, together with the oath of office shall be deposited with the Secretary of State.

SECTION 11(d)—Any person, company or corporation operating any coal mine in this State shall be required to pay an inspection fee of not less than six

dollars nor more than ten dollars for each visit of inspection or investigation of a coal mine by a State Mine Inspector, such fee to be regulated by the class of the mine, which shall be fixed by the Inspector and depend upon the length of time consumed, and the expense necessarily incurred in the inspection of such mine, and such fees shall be paid quarterly by the person, company or corporation operating the mine inspected to the Secretary of the Bureau of Labor Statistics and by him covered into the State treasury, to be held as a fund for the payment of salaries of State Mine Inspectors, as herein provided. It shall be the duty of each Inspector, as often as he may deem it necessary and proper, and at least four times a year, to inspect each and every mine in his inspection district. Each inspection shall be certified to by the pit committee and mine manager of said mine. It shall be the duty of each Inspector to keep a detailed record of all inspections and of all fees for such inspections, and he shall file a copy of the same with the Secretary of the State Bureau of Labor Statistics quarterly, between the first and fifteenth days of the following months: October, January, April and July, which reports shall be published annually as a part of the regular report of the State Bureau of Labor Statistics. The Inspectors provided for in this act shall receive as full compensation for their services the sum of eighteen hundred dollars each per annum, to be paid quarterly out of such funds in the State treasury as may be received for inspection fees: *Provided, however*, that in the event of such fees being inadequate to compensate the Inspectors in the amount provided herein, the deficiency in the salaries shall be paid out of any moneys in the State treasury not otherwise appropriated. The Mine Inspector shall be required to post up in some conspicuous place, at the top of each mine visited and inspected by him, a plain statement of the condition of said mine, showing what, in his judgment, is necessary for the better protection of the lives and health of per-

sons employed in said mine; such statement shall give the date of inspection and the number of hours spent in the inspection, also the date of the last previous inspection, and shall be signed by the Inspector and the check weighman, and, if there be no check weighman, employed by the miners, then said statement shall be signed by the weighman at the mine: *provided*, that county boards may appoint an assistant county inspector in counties producing eight hundred thousand tons of coal or more per annum, upon the written request of the district mine inspector, and who shall act under the direction of the district mine inspector and shall receive not less than three dollars and not more than five dollars per day for time actually employed, to be paid out of the county treasury; such assistant inspector shall be one who has received a mine manager's certificate for (from) the Board of Mine Examiners of this State.

SECTION 11(e)—It shall be unlawful for any person, company or corporation to operate any coal mine in this State without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the State's Attorney of the county, or any other attorney, in case of his refusal promptly to act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine, by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to continue to operate said mine or carry on a mining business.

In 1897 Section 11(e) was amended so as to read as follows: the words in italics being inserted into the paragraph

as it was originally enacted. Session Laws 1897, p. 269.

SECTION 11(e)—It shall be unlawful for any person, company or corporation to operate any coal mine in this State, *where more than five men are employed at any one time*, without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the mine inspector in said district, through the State's Attorney of the county, or any other attorney, in case of his refusal to promptly act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to cointnue to operate said mine or carry on a mining business.